

## INSURANCE DIVISION[191]

### Notice of Intended Action

#### **Proposing rule making related to long-term care insurance and providing an opportunity for public comment**

The Insurance Division hereby proposes to amend Chapter 39, “Long-Term Care Insurance,” and Chapter 72, “Long-Term Care Asset Preservation Program,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 514G.111 and 514H.9.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 514G and 514H.

#### *Purpose and Summary*

These proposed amendments to these chapters are a result of the Division’s five-year review of rules. These amendments update the chapters by correcting statutory, Iowa Acts, and website references. Changes are made to Chapter 72 to reflect the repeal of Iowa Code chapter 249G. The rules in Chapter 72 are still necessary in order to set forth the requirements for policies sold prior to December 31, 2009.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commissioner for a waiver of the discretionary provisions, if any.

#### *Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Division no later than 4:00 p.m. on March 18, 2021. Comments should be directed to:

Tracy Swalwell  
Iowa Insurance Division  
1963 Bell Avenue, Suite 100  
Des Moines, Iowa 50315  
Phone: 515.654.6549  
Email: [tracy.swalwell@iid.iowa.gov](mailto:tracy.swalwell@iid.iowa.gov)

#### *Public Hearing*

If requested, a public hearing at which persons may present their views orally or in writing will be held electronically, with no in-person attendance, on March 18, 2021, at 10 a.m. Persons wishing to

attend the hearing should contact Tracy Swalwell. A conference call number will be provided prior to the hearing.

Persons who wish to make oral comments at the hearing must submit a request to Tracy Swalwell prior to the hearing to facilitate an orderly hearing. Persons may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy Swalwell and advise of specific needs.

The public hearing will be canceled without further notice if no public hearing is requested by 12 noon on March 16, 2021.

#### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 191—39.2(514G) as follows:

**191—39.2(514G) Authority.** This chapter is issued pursuant to the authority vested in the commissioner under Iowa Code section ~~514G.7~~ 514G.105 in accordance with the procedures set forth in Iowa Code chapter 17A.

ITEM 2. Amend subrule 39.5(19) as follows:

**39.5(19)** “*Similar policy forms*” means all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Certificates of groups that meet the definition of group long-term care insurance in Iowa Code section ~~514G.4(4)~~ 514G.103 are not considered similar to certificates or policies otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications. For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows: institutional long-term care benefits only, noninstitutional long-term care benefits only, or comprehensive long-term care benefits.

ITEM 3. Amend paragraph **39.6(2)“b”** as follows:

*b.* Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in Iowa Code section ~~514G.7(3)“b”~~ 514G.105(3)“b” expires. No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in Iowa Code section ~~514G.7(3)“b.”~~ 514G.105(3)“b.”

ITEM 4. Amend subrule 39.6(7), introductory paragraph, as follows:

**39.6(7)** *Electronic enrollment for group policies.* In the case of a group ~~defined in Iowa Code section 514G.4(4)~~ long-term care insurance, any requirement that a signature of an insured be obtained by a producer or insurer shall be deemed satisfied if:

ITEM 5. Amend subrule 39.7(5) as follows:

**39.7(5)** *Other limitations or conditions on eligibility for benefits.* A long-term care insurance policy or certificate containing any limitations or conditions for eligibility, other than those prohibited in Iowa Code section ~~514G.7(4)“b,”~~ 514G.105(3)“b,” shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label such paragraph “Limitations or Conditions on Eligibility for Benefits.”

ITEM 6. Amend subrule 39.8(5) as follows:

**39.8(5)** Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated and shall annually furnish this information to the insurance commissioner in the format prescribed by the National Association of Insurance Commissioners, substantially similar to Appendix A.

ITEM 7. Amend subrule 39.10(2) as follows:

**39.10(2)** Where the policy is issued to a group, the required offer in subrule 39.10(1) shall be made to the group policyholder; except, if the policy is issued to a group defined in Iowa Code section ~~514G.4(5) “d,”~~ 514G.103(9) “d,” other than to a continuing care retirement community, the offering shall be made to each proposed certificate holder.

ITEM 8. Amend subrule 39.11(1), introductory paragraph, as follows:

**39.11(1)** Application forms shall include the following questions designed to elicit information whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and producer, except where the coverage is sold without a producer, containing such questions may be used. With regard to a replacement policy issued to a group defined by Iowa Code section ~~514G.4(5) “a,”~~ 514G.103(9) “a,” the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced; provided, however, that the certificate holder has been notified of the replacement.

ITEM 9. Amend rule 191—39.14(514G) as follows:

**191—39.14(514G) Filing requirement.** Prior to an insurer or similar organization’s offering group long-term care insurance to a resident of this state pursuant to Iowa Code section ~~514G.4(5) “d,”~~ 514G.103(9) “d,” it shall file with the commissioner evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in this state.

ITEM 10. Amend rule 191—39.18(514G), introductory paragraph, as follows:

**191—39.18(514G) Standard format outline of coverage.** This rule, which is not applicable to life policies with long-term care riders attached, implements, interprets and makes specific the provisions of Iowa Code section ~~514G.7(1) 514G.105~~ in prescribing a standard format and the content of an outline of coverage.

ITEM 11. Amend subrule 39.29(2) as follows:

**39.29(2)** When a group long-term care insurance policy is issued, the offer required in subrule 39.29(1) shall be made to the group policyholder. However, if the policy is issued as group long-term care insurance to a group as defined in Iowa Code section ~~514G.4(4) “d,”~~ 514G.103(9) “d,” other than to a continuing care retirement community or other similar entity, the offering shall be made to each proposed certificate holder.

ITEM 12. Amend paragraph **39.30(7) “b”** as follows:

*b.* For certificates issued on or after July 1, 2003, under a group long-term care insurance ~~policy~~ as defined in Iowa Code section ~~514G.4(4) “a”~~ 514G.103 that was in force on February 1, 2003, the provisions of this rule shall not apply.

ITEM 13. Amend rule 191—39.41(514G) as follows:

**191—39.41(514G) Purpose.** This division is intended to implement Iowa Code chapter 514G as ~~amended by 2008 Iowa Acts, House File 2694,~~ to provide a uniform process for insureds covered under

long-term care insurance to request an independent review of a denial of coverage based on a benefit trigger determination.

ITEM 14. Amend rule 191—39.43(514G) as follows:

**191—39.43(514G) Definitions.** For purposes of this division, the definitions found in ~~2008 Iowa Acts, House File 2694, section 4,~~ Iowa Code section 514G.103 shall apply.

ITEM 15. Amend rule 191—39.44(514G) as follows:

**191—39.44(514G) Notice of benefit trigger determination and content.** The notice required by ~~2008 Iowa Acts, House File 2694, section 10,~~ Iowa Code section 514G.109 shall contain the following information:

1. The reason that the insurer determined that the policy benefit trigger has not been met by the insured.
2. A description of the internal appeal mechanism provided under the long-term care policy.
3. A description of how the insured, after exhausting the insurer's internal appeal process, has the right to have the benefit trigger determination reviewed under the independent review process required by ~~2008 Iowa Acts, House File 2694, section 11~~ Iowa Code section 514G.110.

ITEM 16. Amend subrule 39.47(1) as follows:

**39.47(1)** The commissioner shall provide written notice of the certification decision to the insurer and the insured within the two-business-day period specified in ~~2008 Iowa Acts, House File 2694, section 14~~ Iowa Code section 514G.110.

ITEM 17. Amend subrule 39.51(2), introductory paragraph, as follows:

**39.51(2)** Each insurer shall provide the commissioner a detailed description of the process that the insurer has in place to ensure compliance with the requirements of this division and of ~~2008 Iowa Acts, House File 2694, sections 10 and 11~~ Iowa Code sections 514G.109 and 514G.110. The description required by this subrule shall be filed in a format as directed by the commissioner on or before March 1, 2009, and thereafter as requested by the commissioner. The description shall include:

ITEM 18. Amend subrule 39.53(5) as follows:

**39.53(5)** Procedures to ensure adherence to the requirements of this division and Iowa Code chapter 514G as amended by ~~2008 Iowa Acts, House File 2694,~~ by any contractor, subcontractor, subvendor, agent or employee affiliated with the independent review entity.

ITEM 19. Amend rule 191—39.54(514G) as follows:

**191—39.54(514G) Toll-free telephone number.** The independent review entity shall establish a toll-free telephone service to receive information relating to independent reviews pursuant to this division and Iowa Code chapter 514G as amended by ~~2008 Iowa Acts, House File 2694.~~ The system shall include a procedure to ensure the capability of accepting, recording, or providing instruction to respond to incoming telephone calls during other than normal business hours. The independent review entity shall also establish a facsimile and electronic mail service.

ITEM 20. Amend rule ~~191—39.75(514H,83GA,HF723),~~ parenthetical implementation statute, as follows:

**191—39.75(514H,83GA,HF723) Purpose.**

ITEM 21. Amend subrule 39.75(1) as follows:

**39.75(1)** This division is intended to implement Iowa Code chapter 514H as amended by ~~2009 Iowa Acts, House File 723,~~ and Section 6021 of the federal Deficit Reduction Act of 2005, Public Law 109-171, to establish, in conjunction with the department of human services, a long-term care partnership program in Iowa to provide for financing of long-term care through a combination of private insurance and Iowa Medicaid. This program is also known as the long-term care asset disregard incentive program.

ITEM 22. Amend rule **191—39.76(514H,83GA,HF723)**, parenthetical implementation statute, as follows:

**191—39.76(514H,83GA,HF723) Effective date.**

ITEM 23. Amend rule 191—39.77(514H,83GA,HF723), introductory paragraph, as follows:

**191—39.77(514H,83GA,HF723) Definitions.** For purposes of this division, the definitions in Iowa Code chapter 514H as amended by 2009 Iowa Acts, House File 723, and the definitions in rule 191—39.4(514G) shall apply. In addition, the following definitions shall apply:

ITEM 24. Amend rule **191—39.77(514H,83GA,HF723)**, definition of “Iowa long-term care partnership policy,” as follows:

“*Iowa long-term care partnership policy*” or “*partnership policy*” means an insurance policy that meets the following requirements:

1. and 2. No change.
3. The policy meets all of the applicable requirements of this chapter and Iowa Code chapter 514H as amended by 2009 Iowa Acts, House File 723.
4. and 5. No change.

ITEM 25. Amend rules **191—39.78(514H,83GA,HF723)** to **191—39.85(514H,83GA,HF723)**, parenthetical implementation statutes, by striking “514H,83GA,HF723” wherever it appears and inserting “514H” in lieu thereof.

ITEM 26. Amend subrule 39.80(2) as follows:

**39.80(2)** An insurer or a producer soliciting or offering to sell a partnership policy shall provide to each prospective applicant a copy of the Iowa Long-Term Care Partnership Program Consumer Guide. The Iowa Long-Term Care Partnership Program Consumer Guide form may be found on the division’s website, [www.iid.state.ia.us](http://www.iid.state.ia.us) at [ship.iowa.gov](http://ship.iowa.gov).

ITEM 27. Amend **191—Chapter 39**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 514D.9, ~~Iowa Code chapter and chapters~~ 514G and ~~Iowa Code chapter~~ 514H as amended by 2009 Iowa Acts, House File 723.

ITEM 28. Amend **191—Chapter 39**, Appendix I, Additional Information section, as follows:

Additional Information

If you have questions regarding the long-term care insurance policies or certificates, please contact [carrier name]. If you have questions regarding current laws governing Medicaid eligibility, you should contact the Iowa Department of Human Services (~~Sally Oudekerk, Medicaid Policy Specialist, Bureau of Medical Support~~ Allison Scott, Medicaid Program Manager, telephone number (515)281-3709 (515)418-3497, email address [soudeke@dhs.state.ia.us](mailto:soudeke@dhs.state.ia.us) [ascott@dhs.state.ia.us](mailto:ascott@dhs.state.ia.us)).

ITEM 29. Amend rule 191—72.1(249G) as follows:

**191—72.1(249G 514H) Purpose.** The purpose of this chapter is to ~~establish~~ set forth the minimum standards for long-term care insurance policies and certificates to qualify for participation sold prior to December 31, 2009, that participate in the Iowa long-term care asset preservation program; establish documentation and reporting requirements for issuers of policies or certificates to qualify under the Iowa long-term care asset preservation program; provide full disclosures in the sale of long-term care insurance policies and certificates which qualify under the Iowa long-term care asset preservation program; and facilitate public understanding regarding long-term care insurance and long-term care insurance policies and certificates which qualify under the Iowa long-term care asset preservation program.

ITEM 30. Amend rule 191—72.2(249G) as follows:

**191—72.2(249G 514H) Applicability and scope.** The requirements of this chapter apply to any long-term care insurance policy or certificate that was authorized for sale by the division of insurance as qualifying under the Iowa long-term care asset preservation program under former Iowa Code chapter

249G. No long-term care insurance policy or certificate which has been approved by the division of insurance as a certified long-term care insurance policy or certificate under this chapter may be advertised, solicited, or issued for delivery in this state after December 31, 2009.

ITEM 31. Amend rules **191—72.3(249G)** to **191—72.15(249G)**, parenthetical implementation statutes, by striking “249G” wherever it appears and inserting “514H” in lieu thereof.

ITEM 32. Amend rule **191—72.3(249G)**, definition of “Long-term care asset preservation program,” as follows:

“*Long-term care asset preservation program*” means the program authorized in former Iowa Code chapter 249G.

ITEM 33. Amend rule **191—72.3(249G)**, definition of “Preadmission screening program,” as follows:

“*Preadmission screening program review*” means the program which requires that each person seeking admission to a nursing facility must be screened and approved for admission by the Iowa Foundation of Medical Care in accordance with 441 IAC 81.3(249A) 441—81.3(249A).

ITEM 34. Amend paragraphs **72.7(1)“c”** and **“d”** as follows:

c. Include a provision that the policy or certificate will utilize the “insured event” criteria, defined in ~~72.3(249G)~~ rule 191—72.3(514H), for determining eligibility for benefits and for determining the amount of asset disregard. Approval for admission to a nursing facility under the “preadmission screening program,” as defined in ~~72.3(249G)~~ rule 191—72.3(514H), shall be deemed sufficient but not necessary to meet this insured event criteria.

d. Include a provision that policy or certificate benefits can be used to purchase nursing facility care or home- and community-based care. Home- and community-based care shall include, at a minimum, but not be limited to, the following:

(1) to (5) No change.

All home- and community-based services shall include case management services delivered by a case management agency. An asset disregard will be provided for all benefits used by qualified insureds to purchase “Medicaid-eligible long-term care services” as defined in ~~72.3(249G)~~ rule 191—72.3(514H).

ITEM 35. Amend paragraph **72.7(1)“i”** as follows:

i. Include a provision that benefits shall only be paid after the payment of all other benefits to which the policyholder or certificate holder is otherwise entitled, excluding Medicaid. The issuer shall make reasonable efforts to determine whether benefits are available from other policies or certificates or from Medicare. An asset disregard will only be provided for benefits the issuer can document were used to purchase Medicaid-eligible long-term care services as defined in ~~72.3(249G)~~ rule 191—72.3(514H) for a qualified insured.

ITEM 36. Amend paragraph **72.13(1)“b”** as follows:

b. The issuer shall agree to give the commissioner access to all information described in rule ~~72.10(249G)~~ 191—72.10(514H) on an aggregate basis for all policyholders or certificate holders and on an individual basis for all policyholders or certificate holders who have ever received any benefits. Access to information on persons who have not applied for Medicaid is required in order for the commissioner to determine if an issuer’s system for documenting asset protection is functioning correctly. The commissioner shall have the final decision concerning the frequency of access to the data and the size of samples for auditing or other purposes.

ITEM 37. Amend **191—Chapter 72**, implementation sentence, as follows:

These rules are intended to implement Iowa Code Supplement chapter 249G 514H.